

§ 124.405 How does a Participant obtain Federal Government surplus property?

(a) *General.* (1) Pursuant to 15 U.S.C. 636(j)(13)(F), eligible Participants may receive surplus Federal Government property from State Agencies for Surplus Property (SASPs). The procedures set forth in 41 CFR Part 101–44 and this section will be used to transfer surplus property to eligible Participants.

(2) The property which may be transferred to SASPs for further transfer to eligible Participants includes all personal property which has been determined to be “donable” as defined in 41 CFR 101–44.001–3.

(b) *Eligibility to receive Federal surplus property.* To be eligible to receive Federal surplus property, on the date of transfer a concern must:

- (1) Be in the 8(a) BD program;
- (2) Be in compliance with all program requirements, including any reporting requirements;
- (3) Not be debarred, suspended, or declared ineligible under part 9, subpart 9.4 of the Federal Acquisition Regulations, Title 48 of the Code of Federal Regulations;
- (4) Not be under a pending 8(a) BD program suspension, termination or early graduation proceeding; and
- (5) Be engaged or expect to be engaged in business activities making the item useful to it.

(c) *Use of acquired surplus property.* (1) Eligible Participants may acquire surplus Federal property from any SASP located in any state, provided the concern represents and agrees in writing:

- (i) As to what the intended use of the surplus property is to be and that this use is consistent with the objectives of the concern’s 8(a) business plan;
- (ii) That it will use the property to be acquired in the normal conduct of its business activities or be liable for the fair rental value from the date of its receipt;
- (iii) That it will not sell or transfer the property to be acquired to any party other than the Federal Government during its term of participation in the 8(a) program and for one year after it leaves the program;
- (iv) That, at its own expense, it will return the property to a SASP or transfer it to another Participant if di-

rected to do so by SBA because it has not used the property as intended within one year of receipt;

(v) That, should it breach its agreement not to sell or transfer the property, it will be liable to the Government for the established fair market value or the sale price, whichever is greater, of the property sold or transferred; and

(vi) That it will give SBA access to inspect the property and all records pertaining to it.

(2) A firm receiving surplus property pursuant to this section assumes all liability associated with or stemming from the use of the property.

(3) If the property is not placed in use for the purposes for which it was intended within one year of its receipt, SBA may direct the concern to deliver the property to another Participant or to the SASP from which it was acquired.

(4) Failure to comply with any of the commitments made under paragraph (c)(1) of this section constitutes a basis for termination from the 8(a) program.

(d) *Procedures for acquiring Federal Government surplus property.* (1) Participants may participate in the surplus property distribution program administered by the SASPs to the same extent, but with no special priority over, other authorized transferees. See 41 CFR subpart 101–44.2.

(2) Each Participant seeking to acquire Federal Government surplus property from a SASP must:

- (i) Certify in writing to the SASP that it is eligible to receive the property pursuant to paragraph (b) of this section;
- (ii) Make the written representations and agreement required by paragraph (c)(1) of this section; and
- (iii) Identify to the SASP its servicing SBA field office.

(3) Upon receipt of the required certification, representations, agreement, and information set forth in paragraph (d)(2) of this section, the SASP must contact the appropriate SBA field office and obtain SBA’s verification that the concern seeking to acquire the surplus property is eligible, and that the

identified use of the property is consistent with the concern's business activities. SASPs may not release property to a Participant without this verification.

(4) The SASP and the Participant must agree on and record the fair market value of the surplus property at the time of the transfer to the Participant. The SASP must provide to SBA a written record, including the agreed upon fair market value, of each transaction to a Participant when any property has been transferred.

(e) *Costs.* Participants acquiring surplus property from a SASP must pay a service fee to the SASP which is equal to the SASP's direct costs of locating, inspecting, and transporting the surplus property. If a Participant elects to incur the responsibility and the expense for transporting the acquired property, the concern may do so and no transportation costs will be charged by the SASP. In addition, the SASP may charge a reasonable fee to cover its costs of administering the program. In no instance will any SASP charge a Participant more for any service than their established fees charged to other transferees.

(f) *Title.* The title to surplus property acquired from a SASP will pass to the Participant when the Participant executes the applicable SASP distribution documents and takes possession of the property.

(g) *Compliance.* (1) SBA will periodically review whether Participants that have received surplus property have used and maintained the property as agreed. This review may include site visits to visually inspect the property to ensure that it is being used in a manner consistent with the terms of its transfer.

(2) Participants must provide SBA with access to all relevant records upon request.

(3) Where SBA receives credible information that transferred surplus property may have been disposed of or otherwise used in a manner that is not consistent with the terms of the transfer, SBA may investigate such claim to determine its validity.

(4) SBA may take any action to correct any noncompliance involving the use of transferred property still in pos-

session of the Participant or to enforce any terms, conditions, reservations, or restrictions imposed on the property by the distribution document. Actions to enforce compliance, or which may be taken as a result of noncompliance, include the following:

(i) Requiring that the property be placed in proper use within a specified time;

(ii) Requiring that the property be transferred to another Participant having a need and use for the property, returned to the SASP serving the area where the property is located for distribution to another eligible transferee or to another SASP, or transferred through GSA to another Federal agency;

(iii) Recovery of the fair rental value of the property from the date of its receipt by the Participant; and

(iv) Initiation of proceedings to terminate the Participant from the 8(a) BD program.

(5) Where SBA finds that a recipient has sold or otherwise disposed of the acquired surplus property in violation of the agreement covering sale and disposal, the Participant is liable for the agreed upon fair market value of the property at the time of the transfer, or the sale price, whichever is greater. However, a Participant need not repay any amount where it can demonstrate to SBA's satisfaction that the property is no longer useful for the purpose for which it was transferred and receives SBA's prior written consent to transfer the property. For example, if a piece of equipment breaks down beyond repair, it may be disposed of without being subject to the repayment provision, so long as the concern receives SBA's prior consent.

(6) Any funds received by SBA in enforcement of this section will be remitted promptly to the Treasury of the United States as miscellaneous receipts.

CONTRACTUAL ASSISTANCE

§ 124.501 What general provisions apply to the award of 8(a) contracts?

(a) Pursuant to section 8(a) of the Small Business Act, SBA is authorized to enter into all types of contracts with other Federal agencies, including